SUPREME COURT, U. S.

No. 503

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

THE BROOKLYN UNION GAS COMPANY, LONG ISLAND LIGHTING COMPANY, and PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioners*,

v.

STANDARD OIL COMPANY OF TEXAS, A DIVISION OF CHEVRON OIL COMPANY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit entered on March 27, 1967 in *Standard Oil Company of Texas, et al.* v. *Federal Power Commission,* Tenth Cir. Nos. 9289, *et al.*

OPINIONS BELOW

The opinion of the court of appeals (FPC Pet. 9-13)[1] is reported at 376 F.2d 578, and its opinion on rehearing, entered May 18, 1967 (*infra,* Appendix pp. 1a-3a),

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[1] "FPC Pet." refers to the petition for a writ of certiorari filed by the Solicitor General on behalf of the Federal Power Commission in No. 80, this Term (originally No. 1227, O.T. 1966).

is reported at 376 F.2d 580. The opinion and order of the Federal Power Commission are reported at 36 FPC 309.

JURISDICTION

The judgments of the court of appeals (FPC Pet. 14-21) were entered on March 27, 1967, and rehearing was denied by the court of appeals on May 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b).

QUESTION PRESENTED

Where the Federal Power Commission, having issued *ex parte* temporary certificates to producers pending hearing and disposition of their certificate applications, determines after full hearing on those applications that the prices collected pursuant to the temporary certificates were out of line and not consistent with the public convenience and necessity, does the Commission have the power and the duty to require the producer applicants to refund the excess amounts collected under the temporary certificates?

STATEMENT

In August of 1962, the Federal Power Commission consolidated and set for hearing thirty-eight producer applications for certificates of public convenience and necessity to sell gas for resale in interstate commerce. All of the applications proposed sales from the lower Texas Gulf Coast (Texas Railroad Commission District No. 4); all of the applicants proposed initial prices ranging from 15.9¢ to 19.8¢ per Mcf; and either before the hearings commenced or shortly thereafter each applicant was issued a temporary certificate au-

thorizing commencement of the sale at the proposed initial price pending outcome of the hearings.

In March of 1964, the Federal Power Commission entered an order (1) holding that the in-line price for these proposed sales was 16¢ per Mcf and that certificates should issue at that level, and (2) deferring for later disposition resolution whether and to what extent refunds should be ordered of excess amounts collected pursuant to the temporary certificates pending conclusion of the proceedings, *Amerada Petroleum Corp.*, Op. 422, 31 FPC 623.

Appeals from Opinion No. 422 were taken both by the producer applicants and by the consumer interests (including present petitioners), who had intervened in the FPC proceedings. A producer petition filed with the U.S. Court of Appeals for the Tenth Circuit was deemed the first filed petition and all cases were transferred to that court. In December 1966, the Tenth Circuit sustained the Commission's in-line finding of 16¢ per Mcf, but held that the Commission was without power to order refunds of the excess amounts collected by the producers under the temporary certificates, *Sunray DX Oil Co.* v. *F.P.C.*, 370 F.2d 181. Petitions, filed by the instant petitioners,[2] the FPC,[3] and others,[4] for a writ of certiorari to review the *Sunray* judgment are presently before this Court.

While the appeal from FPC Opinion No. 422 was pending before the Tenth Circuit, the Commission, in

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[2] *Brooklyn Union Gas Co. et al.* v. *F.P.C. et al.*, No. 62, this Term (originally No. 1135, O.T. 1966).

[3] *F.P.C.* v. *Sunray DX Oil Co.*, No. 60, this Term.

[4] *United Gas Improvement Co.* v. *Sunray DX Oil Co.*, No. 61, this Term; *Texaco Inc.* v. *F.P.C.*, No. 82, this Term.

July 1966, acted on the refund issue deferred by Opinion 422. In essence, the Commission directed refunds of all amounts collected by the producers under their temporary certificates in excess of the in-line price of 16¢, with the exception of certain royalty payments and taxes, *Amerada Petroleum Corp.*, Op. 501, 36 FPC 309. The producers again petitioned for review in the Tenth Circuit and, on producer motion for summary disposition, that court, by per curiam order entered March 27, 1967, set aside Opinion No. 501 on authority of its December 1966 opinion in the earlier stage of these proceedings.

REASONS FOR GRANTING THE WRIT

The question raised by the instant petition is identical to Question No. 2 of our petition to review the Tenth Circuit's December 1966 decision in the earlier proceedings of this case, *Brooklyn Union Gas Co. et al. v. F.P.C. et al.*, No. 62, O.T. 1967. Our reasons for urging certiorari here are identical with our reasons in No. 62. Accordingly, we would respectfully refer the Court to pages 17-23 of our earlier petition.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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